

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
 Washington, D.C.

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JUN 13 2008

Copyright Royalty Board

In the Matter of)

Mechanical and Digital Phonorecord)

Delivery Rate Adjustment Proceeding)

Docket No. 2006-3 CRB DPRA)

**RIAA'S UNOPPOSED MOTION TO INVOKE THE PROTECTIVE ORDER IN
 CONNECTION WITH COPYRIGHT OWNERS' TRIAL EXHIBIT 415**

The Recording Industry Association of America ("RIAA") respectfully requests that the Copyright Royalty Judges apply the protective order to certain limited portions of Copyright Owners' Trial Exhibit 415, which was admitted into evidence on May 20, 2008. The Copyright Owners and DiMA have each indicated that they do not oppose this motion.


Trial Exhibit 415 is a licensing agreement between Sony Music and Zingy, Inc., a distributor of mastertones. RIAA did not seek application of the protective order to this agreement at the time it was moved into the record because RIAA had not received advance notice that the Copyright Owners might seek to introduce the agreement into the record and therefore had not had an opportunity to determine whether the agreement was current. As set forth in the attached Declaration of Mark Eisenberg ("Declaration"), the agreement is in fact current. Declaration ¶ 3.

The limited portions of this agreement that RIAA seeks to protect are set forth in Appendix A of this Motion. Each of the terms that RIAA seeks to protect is a term that was individually negotiated between Sony BMG and Zingy. The disclosure of these terms could cause competitive harm to Sony BMG because it could give Sony BMG's competitors and potential business partners valuable insight into Sony BMG's confidential license negotiation strategies. Declaration ¶ 4. (A complete copy of the agreement, with proposed redactions

marked, is set forth at Exhibit A to the Declaration.) They are precisely the sort of licensing terms that this Court has typically protected in current commercial agreements in the course of this proceeding. Accordingly, the Court should grant this motion and extend the protective order to Copyright Owners' Trial Exhibit 415.

For the foregoing reasons, RIAA respectfully requests that the Court extend the protective order to the portions of Copyright Owners' Trial Exhibit 415 that are set forth in Appendix A.

Respectfully Submitted,



Paul M. Smith (DC Bar 459605)
Thomas J. Perrelli (DC Bar 438929)
Steven R. Englund (DC Bar 425613)
David Handzo (DC Bar 384023)
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Counsel for RIAA

June 13, 2008

Appendix A

Proposed Redactions to Copyright Owners' Trial Exhibit 415:

¶ 2, lines 2-4

¶ 4(a), lines 6-7

¶ 6(a), line 1

¶ 7, line 3

¶ 8(a), lines 1-2

¶ 8(b), lines 1-2

¶ 9, line 1

¶ 12, lines 6-15

¶ 13, all

**Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
Washington, D.C.**

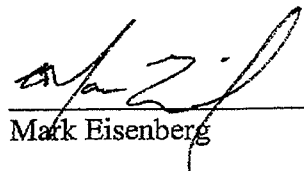
In the Matter of)	
)	
Mechanical and Digital Phonorecord)	Docket No. 2006-3 CRB DPRA
Delivery Rate Adjustment Proceeding)	
)	

DECLARATION OF MARK EISENBERG

1. My name is Mark Eisenberg. I am the Executive Vice President for Business and Legal Affairs of the Global Digital Business Group of Sony BMG Music Entertainment ("Sony BMG"). I testified in this proceeding on May 13, 2008.
2. I understand that in connection with another witness, the Copyright Owners introduced into the record Copyright Owners' Trial Exhibit 415, which is a licensing agreement between Sony Music and Zingy, Inc. ("Zingy"), a distributor of mastertones. A copy of that agreement is attached at Exhibit A to this declaration.
3. This agreement is a current agreement of Sony BMG. Although the agreement has expired on its face, the parties continue to operate pursuant to its terms.
4. The agreement attached at Exhibit A contains brackets around certain terms of the agreement. Each of these terms was specifically negotiated between Sony BMG and Zingy and remains in effect today. The public disclosure of any of these terms could cause competitive harm to Sony BMG because it could give Sony BMG's competitors and potential business partners valuable insight into Sony BMG's confidential licensing negotiation strategies.

5. I declare under penalty of perjury that the foregoing is true and correct.

Date: 6/12/08



Mark Eisenberg

Sony Music Entertainment Inc.

B Flannery

June 16, 2004

330 Madison Avenue

New York, New York 10022-3211

(212) 633-6000

FAX (212) 633-6405

www.sonymusic.com

Law Department

VIA MESSENGER

Andy Volanakis
SVP Business Development
Zingy Mobile Media
156 Fifth Avenue, PH3
New York, NY 10010

CO Trial
Ex. 415

Re: Zingy Ringtone Sales Agreements [SMU 04-131.2(1)]

Dear Andy:

Enclosed please find one (1) fully-executed original of the above-referenced agreement for your files.

Best regards,

M Lansburgh
Matthew Lansburgh
Senior Counsel

Enclosures

cc: L. Kanusher

Sony Music, A Group of
Sony Music Entertainment Inc.
550 Madison Avenue
New York, New York 10022-3211

As of June 3, 2004

Zingy Inc.
156 Fifth Avenue, Penthouse 3
New York, NY 10010

Gentlemen/Ladies:

Until, if ever, superseded by a fully executed long-form agreement in connection with the subject matter contemplated by this letter agreement (the "Definitive Agreement"), this letter, when fully executed, will constitute the entire agreement between Sony Music, a Group of Sony Music Entertainment Inc. ("Seller" or "Sony") and Zingy Inc. ("Distributor" or "you") regarding, inter alia, the sale of various mobile products by Seller through Distributor to Distributor's customers via the Approved Distribution Channels (defined below). Notwithstanding the foregoing, the parties hereby agree to negotiate in good faith with respect to the provisions to be included in the Definitive Agreement (other than those set forth in this letter agreement, all of which are non-negotiable and agreed); provided, however, that the failure or refusal of Distributor or Seller to enter into such Definitive Agreement will not in any manner impede or compromise the enforceability and effectiveness of this letter agreement.

1. Products:

(a) Distributor will be authorized to sell the following types of mobile products (the "Products"), each title, respectively, on a stand-alone basis and not bundled or coupled together with other mobile or other products, in accordance with such specifications governing the form, format and DRM (and related settings) as Seller approves in writing in advance in each instance:

- **Master Ringtones**, each comprising a 20 to 30-second audio clip excerpt of a master recording.
- **Celebrity Voice Ringers**, each comprising a 3 to 30 second recording of a spoken greeting or message, which may or may not be set to music or include instrumental or other musical accompaniment. Celebrity Voice Ringers may include, without limitation, voice greetings and other spoken word products recorded by Sony Music artists and other celebrities.

(b) Each Product, respectively, shall be distributed by Distributor on a stand-alone basis and not bundled or coupled together with other mobile or other products and/or services, in accordance with such specifications governing the form, format and DRM (and related settings) as Seller approves in writing in advance; provided, however, that the offering of Products for sale, each, respectively, on a standalone basis, together with offerings for each of the other master ringtones, voice ringtones and artist images in respect of which Distributor has distribution rights in the Territory and form a part of Distributor's content catalog of mobile products, shall not, by that reason alone, be deemed "bundling" or "coupling" for purposes hereof. Particular titles and Product categories will be designated by Seller as available for sale (and subsequently withdrawn from availability on 24 hours' prior notice to Distributor) as Seller will direct for each type of Approved Distribution Channel and Approved Device (defined below) in Seller's sole discretion. For the avoidance of doubt and subject to any terms, conditions and limitations prescribed elsewhere in this agreement: (i) any titles of Products delivered by Seller to Distributor under paragraphs 5 and 6 below, respectively, shall be deemed to be designated by Seller as available for sale through the Approved Distribution Channels (and corresponding Approved Devices) referred to in paragraph 4 below; and (ii) such titles, Approved Distribution Channels (and corresponding Approved Devices), respectively, will be deemed approved for all purposes hereunder unless and until Sony subsequently withdraws same under the first sentence of this subparagraph 1(b).

2. **Term:** 12 months, effective as of the earlier of (a) signing of this agreement; or (b) first offer of Products for sale by Distributor (if agreed to in writing by Seller).

On the non-terminating party's receipt of such notice, the term of the agreement shall terminate effective as of the date of the termination notice concerned, and all parties shall be deemed to have fulfilled all of their obligations hereunder except those obligations which are intended to survive the end of the term of the agreement (e.g., representations, warranties, indemnities, accounting obligations, reporting obligations, security obligations and the like).

3. **Territory:** United States.

4. **Approved Distribution Channels/Approved Handsets:**

(a) Distributor will be authorized solely to sell the Products through wireless, web, and other distribution channels that have, in each instance, received Sony's prior written approval (each such approved distribution channel, an "Approved Distribution Channel"). Sony shall retain the right at all times during the Term, by notice to you, to subsequently disapprove an Approved Distribution Channel. Distributor agrees to cease selling Products via an Approved Distribution Channel promptly after receipt from Sony of notice under the preceding sentence. Distributor will be responsible for all aspects of the customer relationship – including delivery of the Products, financial processing of transactions (i.e., the processing of each payment (and requested payment in the event that the applicable

merchant bank rejects or declines the processing of the payment concerned) by or on behalf of an end user customer effected by a credit card using the credit card settlement process and procedure of the applicable merchant bank), billing, technical support and customer service.

Approved Distribution Channels
Zingy Web Site (www.zingy.com)
Including affiliated Wap sites
Zingy mMode Channel on AT&T Wireless mMode deck
Nextel Web and WAP Deck / Service which is run via the Zingy content management/delivery platform
Nokia web and WAP sites
AOL web site(s) and WAP channels (ringtones.aol.com)
MSN web site(s) and WAP channels (msn.zingy.com)
Distribution via print advertising or other marketing campaigns allowing end-users to purchase Products via Premium SMS billing

(b) Distributor will be authorized solely to sell the Products through handsets (i.e. mobile wireless devices that are designed to access, store and playback Products) that comply with the technical and digital rights managements specifications attached hereto as Exhibit A and that have, in each instance, received Sony's prior written approval (each such approved handset, an "Approved Handset"). Prior to and during the Term you shall be permitted to seek Sony's approval for handsets by Sony by submitting the information set forth on Exhibit B hereto in respect of each device for which you are seeking approval.

(c) The offer, sale and/or fulfillment of Products hereunder will not contain any materials or messaging that could be construed by a reasonable person as an endorsement of any product or service, or as a "commercial tie-up" or "commercial tie-in" or any similar use, in whole or in part. Distributor will be responsible for all aspects of the customer relationship – including electronic delivery of the digital files, licenses and permits to consumers, financial clearances, billing, and customer service.

5. Delivery of Content: Except as otherwise described herein, Seller will prepare and deliver to Distributor all Products in pre-encoded, digitized mobile formats as required for the applicable Approved Devices for each Approved Distribution Channel. Distributor will not edit or otherwise alter any of the Products, except as may be reasonably necessary to distribute the Products through each Approved Distribution Channel in accordance with a mutually agreed technical specification. All Products will be hosted and delivered solely from servers owned and controlled by Distributor in the United States. For the purpose of facilitating the delivery of the Products by Seller to Distributor in formats required by Distributor, Seller will make Seller's proprietary "PartnerWeb" extranet platform available to Distributor. Distributor agrees to use the

PartnerWeb platform to input and define, through a web-based interface, its media file formats, preview file formats, metadata requirements, and content package delivery specifications (collectively, the "Format Specifications"). Seller will encode and deliver the Products in accordance with the Format Specifications (to the extent said Format Specifications are supported by Seller). Distributor will be responsible for updating the Format Specifications as necessary during the Term (e.g. adding new file formats, updating formats if technical requirements change etc.), through the PartnerWeb platform. Seller will provide Distributor with a confidential, private PartnerWeb account, for its exclusive use solely in connection with the requirements of this Paragraph 5. Distributor agrees that it will not attempt to reverse engineer PartnerWeb, share its design with any 3rd party, and acknowledges that PartnerWeb constitutes Confidential Information.

6. Initial Delivery and Refresh Schedule: Within 30 days after the execution of this letter agreement, Seller will deliver to Distributor an initial complement of Products including at least:

- a) [REDACTED] Master Tones
- b) Number of Celebrity Voice Ringers to be mutually agreed

Seller may provide periodic updates to the Products, in its sole discretion.

7. Availability of Products for Sale: Distributor will use commercially reasonable efforts to make Products delivered by Seller to Distributor available through each Approved Distribution Channel within [REDACTED] after such delivery.

8. Pricing: Product will be made available to Distributor pursuant to the "rate card" wholesale price for the Distributor in effect at the time of the sale (or redemption, as the case may be) by the end user consumer. The current "rate card" wholesale price in effect for the Distributor as of the date hereof is as follows:

- a) Master Tones: [REDACTED]
- b) Celebrity Voice Ringers: [REDACTED]

9. Advance: [REDACTED]

10. Publishing: Seller will secure and administer mechanical and synchronization licenses, as applicable, and shall be solely responsible for all costs in connection therewith. Distributor will secure and administer all performance and other necessary publishing licenses, and shall be solely responsible for all costs in connection therewith.

11. Security / Usage Rules: The availability of Products will be expressly conditioned upon compliance with the security, usage rules and DRM requirements and end user acknowledgments and license terms specified by Seller. Without limiting the generality of the

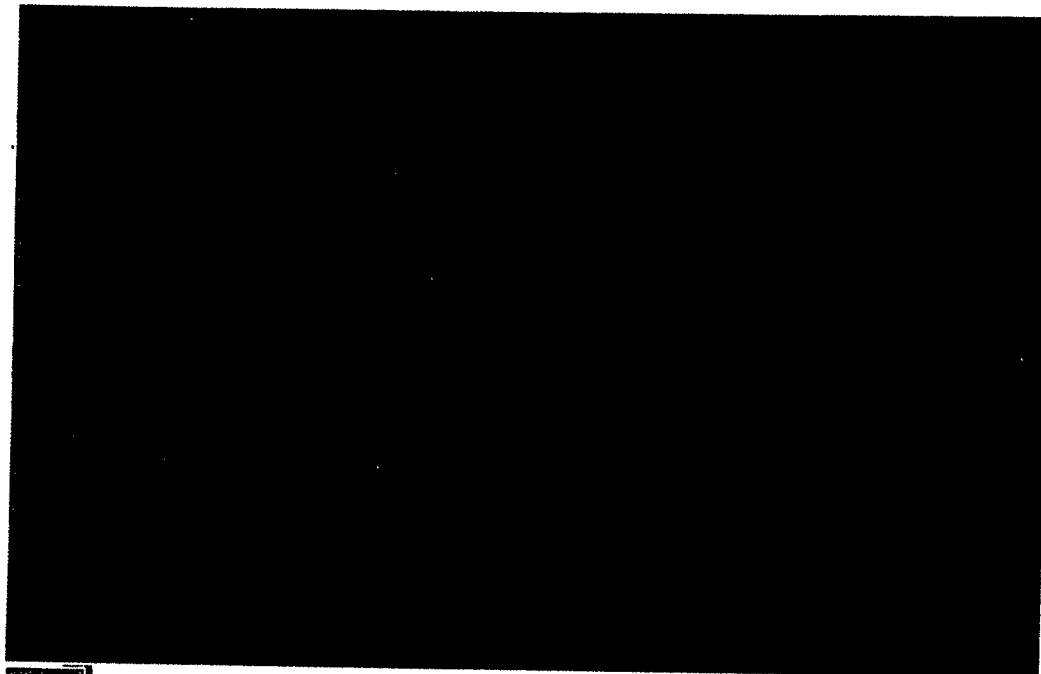
foregoing: (i) Distributor agrees that each Product distributed hereunder shall be encoded to prevent end users of the Products from exporting, copying, forwarding, or otherwise sharing the Products with others, and (ii) as a condition precedent to receiving delivery of each Product, each end user customer will acknowledge and agree in a binding end user license agreement that: (A) the Product concerned may not be exported, copied, forwarded, or otherwise shared with others; and (B) the end user customer consents to have the foregoing limitations on use enforced through technological means via the applicable security solution and/or DRM settings. Distributor acknowledges that Seller will have the right to approve each security solution, DRM and usage rule set employed by Distributor for each Product category, and that Seller's usage rules in respect of its Products may be subsequently modified or changed by Seller, in its sole discretion. Distributor further acknowledges that Seller will exercise reasonable efforts to provide Products, where applicable, in "Forward Locked" formats or in a format that is otherwise DRM protected, and may restrict distribution of some or all Products to handsets that fully comply with the OMA 1.0 Forward Lock standard, Nokia Closed Content List (CCL), Yamaha SMAF Transfer Flag, or similar standards. Nothing in the preceding sentence shall, however, reduce Distributor's obligation to ensure that all Products hereunder are distributed in strict compliance with clause (i) above of this paragraph 11.

12. Reporting: Distributor will provide a monthly accounting of all Products sold, all Products redeemed, all gross revenues received, all actual monies due to Seller, and other relevant information, along with remittance of all payments due. Distributor will make reporting available electronically in a pre-defined format specified in the Definitive Agreement compatible with the requirements of Seller's electronic reporting system, which format will include at a minimum:

[REDACTED]

[REDACTED] Distributor will collect, bear and pay any and all taxes, duties and customs of any kind, however designated, levied or based in any way anywhere in the Territory based on the performance of Distributor's obligations under this letter agreement or the sale or resale of any Products, including all sales, use, excise, purchase, value added or similar taxes.

[REDACTED]



14. **Quality Control:** Seller will have the right to evaluate and approve the technical and quality standards for Products, including the accuracy and reliability of Distributor's implementation and enforcement of the corresponding usage rules and DRM requirements, and the quality of all Products prior to the time they are made available for sale. If any Products are below Seller's standards at any time, Distributor will immediately take all steps to rectify any technical or quality deficiencies identified by Seller.

14.1. **Names and likenesses.** Distributor will not use any names, likenesses or biographical materials pertaining to any Sony Artists other than in connection with advertising and promoting the applicable Programs. All uses of such names, likenesses or biographical materials will be subject to Seller's prior written consent in each instance.

15. **Confidentiality; press releases.**

(a) Each party (each a "Disclosing Party") agrees that it will, and it will instruct in writing its respective attorneys, accountants and other professional advisors (collectively, "Advisors") to, hold in confidence and not communicate, transmit, publish, disseminate or otherwise disclose any of the terms and conditions of this agreement or any information regarding the other Party's business learned in the course of dealing or performance hereunder (collectively, "Confidential Information"); provided, however,

that nothing in this paragraph 15(a) will prohibit disclosure of such Confidential Information: (i) by the parties to its financial officers, management, bankers or others as may be reasonably necessary in the operation of its respective business; (ii) by each party to its respective Advisors to the extent that such disclosure is in the opinion of such Advisors required to enable such Advisors fully to represent the party concerned; (iii) in connection with any legal or governmental proceeding; or (iv) to any judicial, governmental or regulatory body. Notwithstanding anything to the contrary herein, Confidential Information shall not include Information which: (i) at or prior to the time of disclosure by the Disclosing Party was known to or independently developed by the party receiving such Information (a "Receiving Party"), except to the extent unlawfully appropriated by the Receiving Party or third party; (ii) at or after the time of disclosure by the Disclosing Party becomes generally available to the public through no wrongful or negligent act or omission on the Receiving Party's part; (iii) the Receiving Party receives from a third party free to make such disclosure without breach of any legal obligation; and/or (iv) is required to be disclosed pursuant to any statute, regulation, order, subpoena or document discovery request.

(b) No press releases or other public statements without prior mutual written approval.

16. Books and records. (a) Distributor will maintain accurate and complete records and books of account in accordance with GAAP applied on a consistent basis, which will include, at a minimum, all documentation needed by Seller to compute and verify the payments payable to Seller hereunder, and to verify all of the information required to be delivered to or otherwise made available to Seller in connection with the performance of this Agreement. Upon reasonable advance written notice, Seller will have the right to examine those books and records at any time during Distributor's normal business hours at the place where such books and records are normally maintained, and to make copies of them and extract information from them.

(b) Upon reasonable advance notice, Seller will have the right, at its own expense, to conduct technical audits of the Distributor for the purpose of observing and verifying the storage, hosting, security, serving, delivery and other use of the Products, including, for the avoidance of doubt and without limitation, all hardware and software components and systems utilized by Distributor, including server logs, and all documentation setting forth Distributor's policies and procedures with respect to security features and formats, wherever any such hardware and software components and systems and documentation are maintained or stored, as applicable, including, without limitation, any and all data centers and information technology departments performing services or operations in connection with or on behalf of the Distributor.

17. Termination.

(a) (1) Upon the occurrence of any Default Event, in addition to any other rights and remedies which Seller has under this letter agreement or otherwise, Seller may terminate the Term upon notice to Distributor. No exercise of any right or remedy

hereunder will limit Seller's right to recover damages by reason of Distributor's default, Seller's right to exercise any other right or remedy under this subparagraph 17(a), or any of Seller's other rights or remedies.

(2) A "Default Event" means: (i) Distributor's failure to timely make payments required hereunder or render reports or accountings as and when due or cooperate or render any information or documents required to be furnished or otherwise made available to Seller as and when required hereunder; (ii) Distributor's breach of any of Distributor's representations, warranties, covenants or obligations hereunder, or Distributor's failure to fulfill any of Distributor's material obligations hereunder; (iii) Distributor's bankruptcy or insolvency, or the dissolution or the liquidation of Distributor's assets, or the filing of a petition in bankruptcy or insolvency for an arrangement or reorganization by, for or against Distributor, or the appointment of a receiver or a trustee for all or a portion of Distributor's property, or Distributor's making an assignment for the benefit of creditors; (iv) Distributor's attempt to assign any of Distributor's rights under this Agreement in contravention of this letter agreement without Seller's prior written consent, or the succession of any of those rights to any other Person by operation of law; (v) If as a result of Distributor's acts or omissions any Persons other than eligible purchasers through the applicable Approved Distribution Channel obtain access to the Products in contravention of the terms and limitations regarding access thereto prescribed herein; (vi) If for any reason Distributor ceases doing business in the ordinary course and/or there is a substantial diminution in the ability of Distributor to effectively carry on its business in general or any aspect thereof or the business of the Service in particular; and/or (viii) In the event of a change of control of Distributor.

(b) Upon termination or earlier expiration of the Term: (1) all rights granted to Distributor herein will immediately terminate, and Distributor will not thereafter have any right to make any use of any Products; (2) Distributor will immediately return, delete or destroy all Products (together with all computer files, software or other media embodying the Products), as Seller will direct in Seller's sole discretion; (3) Distributor will immediately remove all links to web sites or other properties owned or controlled by Seller; and (4) all monies then due or to become due to Seller will become immediately due and payable.

18. Misc. (a) All notices under this agreement will be in writing and will be given by courier or other personal delivery or by registered or certified mail; provided, however that notwithstanding anything elsewhere herein, take-down notices may be via facsimile, electronic mail or any other effective method of written communication).

(b) This agreement has been entered into in New York, and the validity, interpretation and legal effect of this agreement will be governed by the laws of New York applicable to contracts entered into and performed entirely within New York (without giving effect to any conflict of law principles under New York law). The New York courts (state and federal), will have sole jurisdiction of any controversies regarding this agreement. The parties waive any and all objections to venue in those courts and hereby submit to the jurisdiction of those courts.

(c) (1) Seller may assign Seller's rights under this agreement in whole or in part to any subsidiary, affiliated or controlling corporation, to any Person owning or acquiring a substantial portion of the stock or assets of Seller, or to any partnership or other venture in which Seller participates, and such rights may be similarly assigned by any assignee.

(2) Distributor may assign Distributor's rights under this agreement to another corporation, subject to the following conditions:

(A) The assignee shall be subject to Sony's approval, which approval Sony shall not unreasonably withhold (Sony shall not be deemed unreasonable in rejecting any assignee that is a Triggering Person or a person engaged in Objectionable Activities);

(B) The assignment shall not be effective until you have delivered to Sony an instrument satisfactory to Sony in Sony's sole discretion effecting the assignment and the assignee's assumption of your obligations, and Sony has executed that instrument to evidence Sony's approval of it;

(C) No such assignment shall relieve you of your obligations under this agreement; and

(D) If such an assignment takes place, any further transfer of the rights assigned shall be subject to the same conditions.

Any purported assignment by you in violation of this section 18(c)(2) shall be void.

(3) "Triggering Person" shall mean: (i) a person or entity or any affiliate of such person or entity that is engaged in the business of selling or otherwise making available records (as that term is understood in the United States phonograph record industry) (including, for the avoidance of doubt, internet music retailers); (ii) a person or entity or any affiliate of such person or entity that is engaged in the recording industry; (iii) a person or entity or any affiliate of such person or entity that is engaged in the music publishing industry; (iv) a person or entity or any affiliate of such person or entity that is engaged in the radio, television and/or background/foreground music industry; (v) a person or entity or any affiliate of such person or entity that is engaged in any business that owns or controls a so-called "portal" web site or a consolidated network of web sites; (vi) a person or entity or any affiliate of such person or entity that is engaged in the business of manufacturing and/or selling consumer electronics devices; (vii) a person or entity or any affiliate of such person or entity that is engaged in the business of selling blank digital recording media (other than those products in respect of which appropriate royalties are paid in accordance with the Audio Home Recording Act amendments to the United States Copyright Law), products designed to circumvent copy protection mechanisms (e.g., audio and/or video stream capture software) or any

service that directly or indirectly facilitates the reproduction, distribution, display and/or performance of copyrighted materials without the express authorization of the applicable rightsowners; and/or (viii) any person or entity or any affiliate of such person or entity that is a Prohibited Entity. In each case, Distributor may request that Sony inform Distributor whether a potential acquirer of Distributor constitutes a Prohibited Entity.

(4) "Prohibited Entity" shall mean a person or entity that is (A) an entity (or the parent, subsidiary, affiliate or licensee of any such entity) against which Sony or any licensee, either directly or indirectly, has an actual or potential claim arising out of the unauthorized recording, manufacture, distribution, sale, reproduction (or other use) of any Products or other property or other tangible or intangible rights, of which Sony shall inform Distributor, or (B) an entity (or the parent, subsidiary, affiliate or licensee of any such entity) involved in litigation with Sony arising out of the unauthorized recording, manufacture, distribution, sale, reproduction (or other use) of any Property or other property or other tangible or intangible rights.

(5) "Objectionable Activities" means, with respect to any particular third parties, any one (1) or more of the following activities: maintaining a web site that facilitates and/or promotes illegal activity, depicts sexually explicit images, promotes violence, promotes discrimination, incorporates any materials that infringe or assist others to infringe on any intellectual property rights, engages in the endorsement of political positions or political candidates, engages in the sale or advertisement of, tobacco, firearms, personal hygiene products, pornography, religious causes or any other subject matter which Sony deems in its sole, unrestricted discretion to be objectionable.

(d) You will at all times indemnify and hold harmless Seller and any licensee of Seller from and against any and all claims, losses, damages, liabilities, costs and expenses, including, without limitation, legal expenses and reasonable counsel fees, arising out of any breach or alleged breach by you of any warranty, representation, covenant or agreement made by you.

(e) To the best of Sony's knowledge, Sony represents and warrants that the use of the Products as and to the extent expressly permitted herein will not violate or infringe the rights of any third parties. Sony will at all times indemnify and hold harmless Distributor from and against any and all third-party claims, losses, damages, liabilities, costs and expenses, including, without limitation, out-of-pocket legal expenses and reasonable out-of-pocket counsel fees, arising out of Sony's breach of the preceding representation and warranty.

(f) No change or termination of this Agreement shall be binding upon Seller unless it is made by an instrument signed by an authorized officer of Seller. A waiver by either party of any provision of this agreement in any instance will not be deemed a waiver of such provision, or any other provision hereof, as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this agreement will be cumulative and none of them will be in limitation of any other remedy.

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right, undertaking, or obligation of either party. If any part of this agreement, or the application thereof to any party, will be adjudged by a court of competent jurisdiction to be invalid, such judgment will not affect the remainder of this agreement, which will continue in full force and effect, or the application of this agreement to the remaining parties.

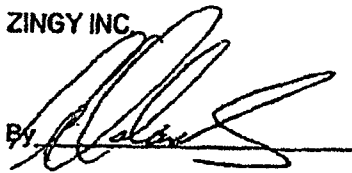
Very truly yours,

SONY MUSIC, a Group of
Sony Music Entertainment Inc.

By 

ACCEPTED AND AGREED TO:

ZINGY INC.

By 


 RON WILCOX
EVP, BA & NT, SMEI
SVP, BA & ADM., SONY MUSIC, A GROUP OF SMEI

Exhibit A

TECHNICAL AND DIGITAL RIGHTS MANAGEMENT SPECIFICATIONS

Handsets that support the following DRM/forward-lock mechanism shall be deemed to comply with Sony's technical and digital rights management specifications:

1. Forward-Lock (as set forth in the OMA DRM Requirements Version 1.0 or its successor version)

"OMA" means the Open Mobile Alliance.

2. Yamaha SMAF "Transfer" Flag
3. Nokia CCL MIME type-level Protection

EXHIBIT B

(Appended in accordance with subparagraph 4(b))

CONTENT AND HANDSET AND CONTENT SPECIFICATIONS

[FORM]

PART I. HANDSET SPECIFICATIONS

A. General Handset Information

Make: _____

Model: _____

Interfaces: _____

(Examples: PC cable, IR, Bluetooth)

PART II. HANDSET CONTENT SPECIFICATIONS

A. Ringtone Format Specification ("Ringtone Format")

1. File Format(s): _____
2. Maximum File Size: _____
3. CODEC: _____
4. Bitrates & Bitdepth: _____
5. Max. Signal Level: _____

B. Preview Sound Clip Files

1. Number of formats per song: _____ 2 _____
2. Format(s): _____ Real Audio, Windows Media Audio _____
3. CODEC(s): _____ Real Audio, Windows Media Audio _____
4. Bitrate(s): _____

NOTE: The Sound Clips shall not be streamed by the Distributor at bit rates exceeding 64kbps. The Distributor shall not make the Ringtone Format file available as the preview file.

C. DRM Specifications

Ringtone Format will be provided by Sony to Distributor with DRM protection as follows:

a. DRM Format:

(Example: OMA Version 1.0 Forward Lock)

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b. File Extension: _____

Does the Handset enable a Ringtone Format file with the specified DRM to be sent out of the Handset by end-users?

___ Yes

Interface: _____

___ No

Does the Handset enable unprotected music files to be transferred to Handset by end-users?

___ Yes

File Types: _____

Interface: _____

___ No

(Example: user sends unprotected MP3 to device via IR interface and assigns said MP3 as ringtone)

E. Comments by Distributor

F. Distributor Contact Person

Handset and Content Specifications Approval by Sony

Handset Approved:

___ Yes ___ No

Date: _____

By: _____

Title: _____



CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of June 2008, I caused a true and correct copy of the Public Version of the **RECORDING INDUSTRY ASSOCIATION OF AMERICA'S UNOPPOSED MOTION TO INVOKE THE PROTECTIVE ORDER IN CONNECTION WITH COPYRIGHT OWNERS' TRIAL EXHIBIT 415** to be served upon the following by electronic mail and UPS overnight delivery:

Fernando R. Laguarda
Thomas G. Connolly
Charles D. Breckinridge
Kelley A. Shields
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I further hereby certify that on the 13th day of June 2008, I caused a true and correct copy of the foregoing Public Version of the **RECORDING INDUSTRY ASSOCIATION OF AMERICA'S UNOPPOSED MOTION TO INVOKE THE PROTECTIVE ORDER IN CONNECTION WITH COPYRIGHT OWNERS' TRIAL EXHIBIT 415** to be served upon the following by electronic mail only:

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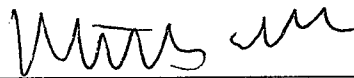
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